

Senate Local Govt. Comm.

Exhibit No. 3

Date 2-6-07

Bill No. SB 345

Senate Bill 345
Montana Stream Legacy Act
Senate Local Government Committee
February 6, 2007

SB 345 - Exempt and Nonexempt Cities and Towns

Census-Designated Places with and without Sewer Districts

KEY	
	= incorporated cities and towns are exempt from SB 345
	= within a reservation - so SB 345 does NOT apply
	= unincorporated area with a sewer district - so they are exempt from SB 345
	= unincorporated area served by both sewer district and septic - so local government will determine areas exempt from SB 345
	= unincorporated area that does NOT have a sewer district - so these would have to comply with SB 345

Town/City	County	Sewer
Anaconda	Anaconda DeerLodge	Incorporated
Dillon	Beaverhead	Incorporated
Lima	Beaverhead	Incorporated
Wisdom	Beaverhead	Has Own Sewer District
Busby	Big Horn	N.Cheyenne Reservation
Crow Agency	Big Horn	Reservation
FortSmith	Big Horn	N.P.S. Land - Has Own Sewer District
Hardin	Big Horn	Incorporated
Lodgegrass	Big Horn	Incorporated
Muddy	Big Horn	N.Cheyenne Reservation
Pryor	Big Horn	Crow Reservation
St Xavier	Big Horn	Crow Reservation
Wyola	Big Horn	Crow Reservation
Big Timber	Big Timber	Incorporated
Chinook	Blaine	Incorporated
Fort Belnap Agency	Blaine	Fort Belnap Reservation
Harlem	Blaine	Incorporated
Hays	Blaine	Fort Belnap Reservation
Townsend	Broadwater	Incorporated
Walkerville	Butte-SilverBow	Incorporated
Bearcreek	Carbon	Incorporated
Belfry	Carbon	Has Own Sewer District
Bridger	Carbon	Incorporated
Fromberg	Carbon	Incorporated
Joliet	Carbon	Incorporated
Red Lodge	Carbon	Incorporated
Ekalaka	Carter	Incorporated
Belt	Cascade	Incorporated
Black Eagle	Cascade	Has Own Sewer District
Cascade	Cascade	Incorporated
Great Falls	Cascade	Incorporated
Malmstrom AFB	Cascade	Air Force Base - Connected to Great Falls City Sewer
Neihart	Cascade	Incorporated
Simms	Cascade	Has Own Sewer District

Town/City	County	Sewer
Sun Prairie	Cascade	Has Own Sewer District
Sun River	Cascade	Has Own Sewer District
Vaughn	Cascade	Reservation
Big Sandy	Chouteau	Incorporated
Carter	Chouteau	Has Own Sewer District
Fort Benton	Chouteau	Incorporated
Geraldine	Chouteau	Incorporated
Highwood	Chouteau	Has Own Sewer District
Loma	Chouteau	Has Own Sewer District
Parke School	Chouteau	Reservation
Ismay	Custer	Incorporated
Miles City	Custer	Incorporated
Flaxville	Daniels	Incorporated
Scobey	Daniels	Incorporated
Glendive	Dawson	Incorporated
Richey	Dawson	Has Own Sewer District
Baker	Fallon	Incorporated
Plevna	Fallon	Incorporated
Denton	Fergus	Incorporated
Grass Range	Fergus	Incorporated
Lewistown	Fergus	Incorporated
Lewistown Heights	Fergus	Parts w/in Lewistwn Muni., some septic
Moore	Fergus	Incorporated
Winifred	Fergus	Incorporated
Bigfork	Flathead	Has Own Sewer District
Columbia Falls	Flathead	Incorporated
Coram	Flathead	Has Own Sewer District
Evergreen	Flathead	Served by Kalispell Muni. Sewer Dist.
Hungry Horse	Flathead	Has Own Sewer District
Kalispell	Flathead	Incorporated
Lakeside	Flathead	Has Own Sewer District
Martin City	Flathead	Has Own Sewer District
Somers	Flathead	Has Own Sewer District
Whitefish	Flathead	Incorporated
Amsterdam/Churchill	Gallatin	Has Own Sewer District
Belgrade	Gallatin	Incorporated
Big Sky	Gallatin	Has Own (Big) Sewer Dist. Would not be considered Muni
Bozeman	Gallatin	Incorporated
Manhattan	Gallatin	Incorporated
Three Forks	Gallatin	Incorporated
West Yellowstone	Gallatin	Incorporated
Willow Creek	Gallatin	Has Own Sewer District
Jordan	Garfield	Incorporated
Browning	Glacier	Incorporated
Cut Bank	Glacier	Incorporated
East Glacier/Park Village	Glacier	Reservation
North Browning	Glacier	Reservation
South Browning	Glacier	Reservation

Town/City	County	Sewer
Starr School	Glacier	Reservation
Lavina	Golden Valley	Incorporated
Ryegate	Golden Valley	Incorporated
Drummond	Granite	Incorporated
Philipsburg	Granite	Incorporated
Agency	Hill	Rocky Boy Reservation
Box Elder	Hill	Has Own Sewer District
Gildford	Hill	Has Own Sewer District
Havre	Hill	Incorporated
Havre North	Hill	Served by Havre Sewer Dist.
Hingham	Hill	Incorporated
Inverness	Hill	Has Own Sewer District
Kremlin	Hill	Has Own Sewer District
Rudyard	Hill	Has Own Sewer District
Saddlebutte	Hill	Has Own Sewer District
St Pierre	Hill	Reservation
Sangrey	Hill	Reservation
WestHavre	Hill	Served by Havre Muni Sewer Dist.
Basin	Jefferson	Has Own Sewer District
Boulder	Jefferson	Incorporated
Montana City	Jefferson	Has Own Sewer District
Hobson	Judith Basin	Incorporated
Stanford	Judith Basin	Incorporated
Arlee	Lake	Flathead Reservation
Big Arm	Lake	Flathead Reservation
Charlo	Lake	Flathead Reservation
Dayton	Lake	Flathead Reservation
Elmo	Lake	Flathead Reservation
Finley Point	Lake	Flathead Reservation
Jette	Lake	Flathead Reservation
Kerr	Lake	Has Own Sewer District
KickingHorse	Lake	Flathead Reservation
Kings Point	Lake	Flathead Reservation
Pablo	Lake	Flathead Reservation
Polson	Lake	Incorporated
Ravalli	Lake	Flathead Reservation
Rockypoint	Lake	Flathead Reservation
Ronan	Lake	Incorporated
St Ignatius	Lake	Incorporated
Turtle Lake	Lake	Flathead Reservation
WoodsBay	Lake	Has Own Sewer District
Augusta	Lewis & Clark	Has Own Sewer District
East Helena	Lewis & Clark	Incorporated
Helena	Lewis & Clark	Incorporated
Helena Valley Northeast	Lewis & Clark	Served by Helena Muni. District

Town/City	County	Sewer
Helena Valley Northwest	Lewis & Clark	Served by Helena Muni. District
Helena Valley Southeast	Lewis & Clark	Served by Helena Muni. District
Helena Valley West Central	Lewis & Clark	Served by Helena Muni. District
Helena West Side	Lewis & Clark	Served by Helena Muni. District, designated Rural Improvement
Lincoln	Lewis & Clark	Has Own Sewer District
Chester	Liberty	Incorporated
Eureka	Lincoln	Incorporated
Fortine	Lincoln	Has Own Sewer District
Libby	Lincoln	Incorporated
Rexford	Lincoln	Incorporated
Troy	Lincoln	Incorporated
Ennis	Madison	Incorporated
Sheridan	Madison	Incorporated
Twin Bridges	Madison	Incorporated
Virginia City	Madison	Incorporated
Circle	McCone	Incorporated
White Sulphur Springs	Meagher	Incorporated
Alberton	Mineral	Incorporated
St Regis	Mineral	Has Own Sewer District
Superior	Mineral	Incorporated
East Missoula	Missoula	Some is served by Missoula Muni Dist.
Lolo	Missoula	Some of Lolo is served by a sewer district
Missoula	Missoula	Incorporated
Orchard Homes	Missoula	Some is served by Missoula Muni Sewer
Wye	Missoula	Will have its own Sewer Dist. this year
Melstone	Musselshell	Incorporated
Roundup	Musselshell	Incorporated
Clyde Park	Park	Incorporated
Cooke City/Silver Gate	Park	Has Own Sewer District
Gardiner	Park	Has Own Sewer District
Livingston	Park	Incorporated
Wilsail	Park	Has Own Sewer District
Winnett	Petroleum	Incorporated
Dodson	Phillips	Incorporated
Lodgepole	Phillips	Reservation
Malta	Phillips	Incorporated
Saco	Phillips	Incorporated
Conrad	Pondera	Incorporated

Town/City	County	Sewer
Heart Butte	Pondera	Blackfeet Reservation
Valier	Pondera	Incorporated
Broadus	Powder River	Incorporated
Deer Lodge	Powell	Incorporated
Terry	Prairie	Incorporated
Darby	Ravalli	Incorporated
Hamilton	Ravalli	Incorporated
Pinesdale	Ravalli	Incorporated
Stevensville	Ravalli	Incorporated
Victor	Ravalli	Has Own Sewer District
Fairview	Richland	Incorporated
Sidney	Richland	Incorporated
Bainville	Roosevelt	Incorporated
Brockton	Roosevelt	Incorporated
Culbertson	Roosevelt	Incorporated
Froid	Roosevelt	Incorporated
Poplar	Roosevelt	Incorporated
Wolf Point	Roosevelt	Incorporated
Ashland	Rosebud	Has Own Sewer District
Colstrip	Rosebud	Incorporated
Forsyth	Rosebud	Incorporated
Lame Deer	Rosebud	Reservation
Dixon	Sanders	Flathead Reservation
Hot Springs	Sanders	Incorporated
Lonepine	Sanders	Reservation
Niarada	Sanders	Reservation
Old Agency	Sanders	Reservation
Plains	Sanders	Incorporated
Thompson Falls	Sanders	Incorporated
Medicine Lake	Sheridan	Incorporated
Outlook	Sheridan	Incorporated
Plentywood	Sheridan	Incorporated
Westby	Sheridan	Incorporated
Absarokee	Stillwater	Has Own Sewer District
Columbus	Stillwater	Incorporated

Town/City	County	Sewer
Park City	Stillwater	Has Own Sewer District
Choteau	Teton	Incorporated
Fairfield	Teton	Incorporated
Power	Teton	Has Own Sewer District
Kevin	Toole	Incorporated
Shelby	Toole	Incorporated
Sunburst	Toole	Incorporated
Hysham	Treasure	Incorporated
Fort Peck	Valley	Incorporated
Glasgow	Valley	Incorporated
Nashua	Valley	Incorporated
Opheim	Valley	Incorporated
StMarie	Valley	Has Own Sewer District
Harlowton	Wheatland	Incorporated
Judith Gap	Wheatland	Incorporated
Wibaux	Wibaux	Incorporated
Billings	Yellowstone	Incorporated
Broadview	Yellowstone	Incorporated
Laurel	Yellowstone	Incorporated
Worden	Yellowstone	Has Part of own Sewer District, the rest is Septic

SB 345: Montana Stream Legacy Act

Protecting People, Property, and Montana's Streams and Rivers

Why SB 345 is Needed

- Development along Montana's rivers and streams is occurring at an unprecedented rate
- More people and homes are being placed in harm's way
- More riverside development leads to more river channelization projects (e.g. riprap and levees), which increase the frequency and severity of floods
- Water quality is being degraded
- Valuable fish and wildlife habitat is being harmed

What SB 345 Does

- Requires all new homes and commercial buildings to be set back at least 250 ft from the ordinary high water mark of Tier 1 streams (SB 345 includes a list of Tier I streams, which includes most of Montana's rivers) and 150 ft from Tier 2 streams (direct tributaries of Tier 1 streams with a drainage area of at least 25 square miles)
- Prohibits the removal of native vegetation within 100 ft of Tier 1 streams and 50 ft of Tier 2 streams
- Keeps new roads away from rivers and streams if practicable alternatives exist
- Allows counties to adopt their own setback standards in lieu of state standards as long as the local standards are based on sound science (e.g. floodplain studies, aerial photos, etc.)
- Exempts agricultural buildings
- Provides a variance process to ensure that no one loses the ability to build on an existing lot
- Includes a grandfather clause to make sure that existing homes and other developments are not impacted by this law, ensuring that if existing buildings are destroyed, they can be rebuilt

Why SB 345 is a State Issue

- Protecting public health and safety is a state issue
- Many rivers in Montana flow through multiple counties, and actions of upstream counties affect downstream counties
- Under Montana law, all flowing water, fish, and wildlife are publicly owned resources

Commonly Asked Questions

What is a stream setback?

A stream setback is a strip of land along all major rivers and streams in the state. It is measured from the ordinary high water mark.

What is prohibited in the setback area?

The focus of this legislation is narrow: it prohibits new residential, commercial or industrial buildings—including septic tanks and drain fields—from being located in this area. Additionally, new roads and parking areas are prohibited “except when necessary to cross a river or stream.”

How does the legislation impact agricultural operations?

Agricultural uses are specifically excluded from the legislation.

What about buildings already in the corridor?

All existing buildings are excluded from the requirements of this legislation. Even if these buildings are destroyed by fire or other disasters, they can be rebuilt.

Isn't this legislation a "taking" of private property? What happens when small lots are too close to a stream or river? This legislation is not a "takings" of private property. The variance process allows exceptions to be made when an existing lot would not be allowed to have a building on it. Specifically, the legislation provides for a variance process if complying with the conditions of the act would result in "unnecessary or undue hardship" because the law would unreasonably restrict the use of a parcel or building on land.

Many of Montana cities and towns are located on major rivers or streams. What will the impact be on cities and towns? Incorporated cities and towns are specifically excluded from the requirements of the legislation. Unincorporated cities and towns with sewer districts are also excluded from the setback.

What about local control?

This bill provides clear criteria that local governments can use to establish their own setbacks for new buildings. These local setbacks—which can be wider or narrower than the state setbacks established by SB 345—would replace the state setbacks.

What about Local Governments with setbacks already in place?

Setback regulations adopted at the local government level generally only apply to new subdivisions. Because buildings cumulatively impact streams, it is important that all new buildings be subject to setbacks. SB 345 has an exemption for two local governments that regulate all new buildings: Choteau County (with a 400-foot and 3-mile setback along different portions of the Missouri River) and the Big Hole River (where meander studies show that new buildings can be a *minimum* of 150 feet from the river).

How will the program be administered by local governments?

Local governments will need to adopt a permitting or certification process that implements their setback program. It will be up to local governments to decide which staff or departments oversee this program. Additionally, local government can grant variances. This variance process makes sure that no one loses the ability to build on an existing lot, and local governments could collect a reasonable fee from the developer to pay for costs related to permitting.

A Final Word

Streamside development:

- Sacrifices the feeling of remoteness floating a Montana river or stream;
- Detracts from the naturalness Montanans treasure about our rivers and streams;
- Degrades the very resource that attracts people to build along streams in the first place—clean water, fish, wildlife and recreation; and
- Can put people and their homes in the path of devastating floods.

The best way to address these issues is to establish a statewide system of stream setbacks that protect Montana's streams and rivers and allow them to flood and meander, without putting homes at risk of flooding and from erosion of the riverbank. This legislation is a fair and sensible solution to the development pressures facing our rivers and streams.

1 AS BILL NO. 343 with Proposed Amendments
2 INTRODUCED BY H. Z. Anderson
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING SETBACK REQUIREMENTS FOR CERTAIN
5 STREAMS; REQUIRING POLITICAL SUBDIVISIONS TO ESTABLISH SETBACK REGULATIONS;
6 AUTHORIZING POLITICAL SUBDIVISIONS TO ISSUE VARIANCES AND COLLECT FEES; AUTHORIZING
7 POLITICAL SUBDIVISIONS TO ADOPT LOCAL REGULATIONS IN LIEU OF STATE STANDARDS THAT MEET
8 CERTAIN REQUIREMENTS; PROVIDING FOR ENFORCEMENT AND PENALTIES; AND PROVIDING AN
9 IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 NEW SECTION. Section 1. Short title. [Sections 1 through 10] may be cited as the "Montana Stream
14 Legacy Act".

15
16 NEW SECTION. Section 2. Intent, findings, and policy. (1) The legislature, mindful of its constitutional
17 obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Stream
18 Legacy Act. It is the legislature's intent that the requirements of [sections 1 through 10] provide adequate
19 remedies for the protection of the environmental life support system from degradation and provide adequate
20 remedies to prevent unreasonable depletion and degradation of natural resources.

21 (2) The legislature finds that:

22 (a) impacts of development on Montana's rivers and streams, including increased downstream erosion
23 and diminished water quality, are often manifested across local government jurisdictional boundaries;

24 (b) the state has a duty and legitimate interest in protecting the integrity of its rivers and streams on behalf
25 of all its citizens;

26 (c) the state has a duty and legitimate interest in protecting people and private property by reducing
27 property loss from flooding and erosion;

28 (d) maintenance of the integrity of rivers and streams is crucial to the quality and quantity of water
29 available to Montanans for domestic, agricultural, industrial, and recreational use;

30 (e) rivers and streams are highly susceptible to impacts from land development;

(f) fish and wildlife that rely on rivers and streams for habitat belong to all Montanans;

(g) development practices on lands adjacent to rivers and streams in many cases are causing excessive and unnecessary damage to the banks, beds, and protective vegetation of the state's rivers and streams; and

(h) through careful management of the lands adjacent to rivers and streams, property owners and developers can achieve their goals without sacrificing water quality or impairing the beneficial uses of the water.

(3) The legislature recognizes that Montana's rivers and streams provide important natural resources that belong to the people of the state and that support the economy, the environment, and the quality of life that Montanans enjoy. It is the policy of the state to ensure that development along rivers and streams proceeds in a way that:

(a) protects property from flooding and erosion;

(b) protects water quality and quantity;

(c) provides opportunities for recreation;

(d) protects valuable water recharge areas;

(e) preserves fish and wildlife habitat; and

(f) preserves the use and enjoyment of private property.

NEW SECTION. Section 3. Definitions. When used in [sections 1 through 10], unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Flood plain" has the meaning provided in 76-5-103.

(2) "Ordinary high-water mark" has the meaning provided in 23-2-301.

(2) "Person" means an individual, firm, partnership, company, commercial entity, corporation, or association.

(3) "Political subdivision" means any incorporated city or town, a consolidated government, or a county.

(4) "Setback" means an area of varying width adjacent to a stream where certain uses have the potential to significantly affect private property, wildlife habitat, water quality, fish, or other aquatic resources. Setbacks may not be smaller than the vegetative buffer.

(5) "Tier I streams" includes the following streams as defined by the United States geological survey: excluding reservoirs

(a) Beaverhead River;

(b) Big Hole River;

(c) Bighorn River;

(d) Bitterroot River;

- 1 (e) Bitterroot River, West Fork;
- 2 (f) Blackfoot River;
- 3 (g) Boulder River as it flows through Jefferson County;
- 4 (h) Boulder River as it flows through Park and Sweet Grass Counties;
- 5 (i) Clark Fork River;
- 6 (j) Clark's Fork of the Yellowstone River;
- 7 (k) Clearwater River;
- 8 (l) Dearborn River;
- 9 (m) East Gallatin River;
- 10 (n) Flathead River;
- 11 (o) Flathead River, Middle Fork;
- 12 (p) Flathead River, North Fork;
- 13 (q) Flathead River, South Fork;
- 14 (r) Gallatin River;
- 15 (s) Jefferson River;
- 16 (t) Jocko River;
- 17 (u) Judith River;
- 18 (v) Kootenai River;
- 19 (w) Little Blackfoot River;
- 20 (x) Madison River;
- 21 (y) Marias River;
- 22 (z) Milk River;
- 23 (aa) Missouri River;
- 24 (bb) Musselshell River;
- 25 (cc) Poplar River;
- 26 (dd) Powder River;
- 27 (ee) Red Rock River;
- 28 (ff) Rock Creek as it flows through Missoula and Granite Counties;
- 29 (gg) Rock Creek as it flows through Carbon County;
- 30 (hh) Ruby River;

(ii) Shields River;

(jj) Smith River;

(kk) Stillwater River as it flows through Park and Stillwater Counties;

(ll) Stillwater River as it flows through Lincoln and Flathead Counties;

(mm) Stillwater River, West Fork, as it flows through Sweet Grass and Stillwater Counties;

(nn) Sun River;

(oo) Swan River;

(pp) Teton River;

(qq) Thompson River;

(rr) Tongue River;

(ss) Whitefish River;

(tt) Yaak River; and

(uu) Yellowstone River.

7 (b) "Tier II streams" means perennial streams that are direct tributaries of tier I streams and that drain an area 25 square miles or greater.

8 (c) "Vegetative buffer" means the portion of the setback closest to the stream that is designated to remain undisturbed.

NEW SECTION. Section 4. Setback regulation jurisdiction. (1) With the exception of [section 9], the provisions of [sections 1 through 10] do not apply to:

(a) incorporated cities and towns;

(b) unincorporated entities established prior to [the effective date of this act] that are classified as census-designated places by the United States bureau of the census, ^{and} are within the boundary of a metropolitan sanitary sewer district created pursuant to 7-13-111, ^{or} ~~and~~ are served by that metropolitan sanitary sewer district;

(c) zoned areas with regulations established on or before [the effective date of this act] that have residential densities of at least 1 unit per acre and are served by municipal sewer and water systems; or

(d) tier I streams or tier II streams regulated by local setback regulations adopted prior to [the effective date of this act] that prohibit all new building construction within 150 feet of streams.

(2) Changes after [the effective date of this act] to local setback regulations adopted prior to [the effective date of this act] must comply with [sections 1 through 10].

4 including: (i) the reconstruction or repair of any septic facility or drainfield as long
as the original footprint of the septic facility or drain field is not exceeded; and
(ii) the reconstruction or repair of any building destroyed or damaged by accident
causes other than flooding, provided that (a) the original footprint of the
building is not exceeded; and (b) reconstruction or repair is completed within
two years of the date of destruction.

2 **NEW SECTION. Section 5. Requirements for setbacks and vegetative buffers.** (1) Along either side

3 of a tier I stream, there must be a setback of at least 250 feet, as measured from the ordinary high-water mark,
4 that must include a vegetative buffer of at least 100 feet.

5 (2) Along either side of a tier II stream, there must be a setback of at least 150 feet, as measured from
6 the ordinary high-water mark, that must include a vegetative buffer of at least 50 feet.

7 (3) Within vegetative buffers, native vegetation must be maintained or enhanced, although weed control
8 is permitted.

10 **NEW SECTION. Section 6. Uses within setback -- authorization.** (1) Except as provided in [section

11 8], the following uses are prohibited within setbacks:

12 (a) any type of new building, including new residential, commercial, or industrial structures, or
13 outbuildings such as a garage or shop;

14 (b) the installation of a manufactured or prefabricated building;

15 (c) new septic tanks and septic tank drain fields;

16 (d) an addition to an existing building of more than 50% of the square footage of the existing structure;

17 or

18 (e) the construction of a new parking lot or road except when necessary to cross a river or stream.

19 (2) The following uses are authorized in a setback:

20 (a) the lawful use of land or buildings that existed on or before [the effective date of this act];

21 (b) any use conducted on property subject to a hydroelectric project license issued by the federal energy
22 regulatory commission or otherwise located within the licensed project boundary as determined by the federal
23 energy regulatory commission;

24 (c) agricultural uses, except any use that includes a new building serviced by electricity, water, and
25 ~~sewer;~~ wastewater facilities

26 (d) structures and equipment used to collect and transport water from a river or stream for agricultural
27 or industrial uses, including diversion and intake structures, pipes, pumps and pumphouses, and related
28 equipment; and (e) structures and infrastructure related to water-related recreation
such as boat ramps, docks, fishing access sites, and boat houses.

29 f (f) limited filling for highway, street, and railroad embankments not associated with stream crossings if:

30 (i) reasonable alternative transportation routes outside the setback are not available; and

- 1 (ii) any encroachment is located as far from the stream channel as possible; and
2 g (7) repair and improvement of existing roads within the setback.
3

4 **NEW SECTION. Section 7. Political subdivision administration -- requirements -- fees.** (1) Before
5 January 1, 2008, any political subdivision that has tier I streams or tier II streams within its boundaries and is
6 subject to [section 4] must implement a permit or certification program for new construction to ensure that the
7 requirements of [sections 1 through 10] are met.

8 (2) A political subdivision may charge a fee to cover the costs of implementing the requirements of
9 [sections 1 through 10].

must adopt variance procedures
that address the

established in
[subsection 3]

10
11 **NEW SECTION. Section 8. Variances.** (1) A political subdivision may establish criteria for granting
12 variances for uses that otherwise would not be allowed pursuant to [section 6], including defining criteria
13 and terms.

14 (2) An application for a variance must include information that the political subdivision considers
15 necessary to evaluate the variance request, including but not limited to a scientific flood plain analysis, plans,
16 maps, and specifications detailing the request.

17 (3) In evaluating a variance request, the political subdivision shall consider whether the variance is:

18 (a) contrary to the public interest;

19 (b) necessary to prevent unnecessary hardship and will comply with the purpose of [sections 1 through
20 10];

21 (c) as small as reasonably possible so that the intent of [section 2] is attained to the greatest degree
22 possible;

23 (d) likely to adversely impact water quality;

24 (e) likely to increase stream bank erosion;

25 (f) likely to increase flood heights or velocity; and

26 (g) being requested as a result of a hardship not caused by the applicant.

27 (4) The applicant for a variance has the burden of presenting a preponderance of evidence to establish
28 that the criteria for granting a variance are met.

29 **NEW SECTION. Section 9. Local setback standards in lieu of state standards.** (1) A political
30 subdivision may enact local setback standards in lieu of state standards that ~~comply with~~ ^{meets the intent of} the policy established

1 in [section 2(3)]. The provisions of [section 5] do not apply to tier I streams and tier II streams subject to the
 2 provisions of the local setback standards. *Local setback standards adopted pursuant*
 3 *to this section should define necessary terms.*
 4 (2) Local setback standards adopted pursuant to this section must:

5 (a) apply to the entire length of the stream within the jurisdiction of the political subdivision;

6 (b) include setbacks based on peer-reviewed science and local conditions that ensure that the prohibited
 7 uses in [section 6] do not occur within at least three of the following areas:

8 (i) wetlands adjacent to streams;

9 (ii) a 100-year flood plain as determined by either the federal emergency management agency or the
 10 department of natural resources and conservation or, in the absence of a designation, a flood ^{plain} ~~plan~~ analysis
 11 adopted by a political subdivision;

12 (iii) areas where it is reasonably possible that an active channel of the stream could migrate in the next
 13 100 years because of erosion or avulsion; or

14 (iv) areas of steep slopes adjacent to the stream or its flood plain;

15 (c) include vegetative buffers that, based on peer-reviewed science and local conditions, prevent
 16 unnatural rates of erosion and sedimentation, protect water quality, and maintain native riparian vegetation.

17 (3) A political subdivision may adopt local setback standards for any perennial, intermittent, or ephemeral
 18 streams within its jurisdiction.

19 **NEW SECTION. Section 10. Enforcement -- penalties.** (1) The proper authorities of the political
 20 subdivision, in addition to other remedies, may institute any appropriate action or proceeding to ensure that a
 21 person who commences a prohibited use after January 1, 2008, without certification by a political subdivision or
 22 a variance shall restore the ^{setbacks and vegetative buffer} ~~waterside management corridor~~ to its original condition before the person disturbed
 23 it.

24 (2) The political subdivision may appoint enforcing officers to supervise and enforce the provisions of
 25 [sections 1 through 10].

26 (3) A knowing violation of [sections 1 through 10] or any regulation adopted pursuant to [sections 1
 27 through 10] is a misdemeanor punishable by a fine not to exceed \$500 a day.

28
 29 **NEW SECTION. Section 11. Notification to tribal governments.** The secretary of state shall send
 30 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell

1 Chippewa tribe.

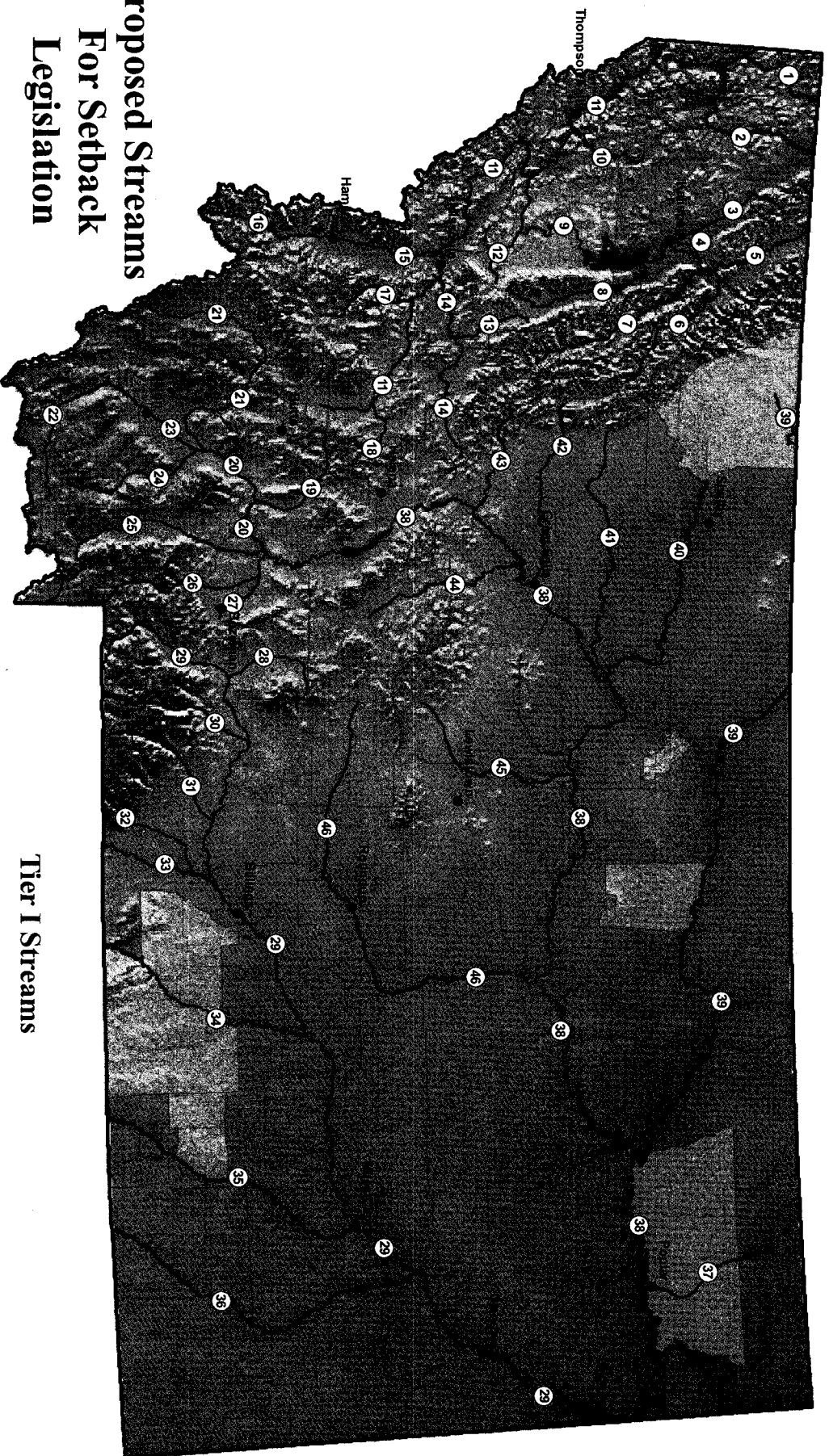
2
3 **NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 10] are intended to be
4 codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 10].
5

6 **NEW SECTION. Section 13. Saving clause.** [This act] does not affect rights and duties that matured,
7 penalties that were incurred, or proceedings that were begun before [the effective date of this act].
8

9 **NEW SECTION. Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
11 the part remains in effect in all valid applications that are severable from the invalid applications.
12

13 **NEW SECTION. Section 15. Effective date.** [This act] is effective on passage and approval.
14

- END -



Proposed Streams For Setback Legislation

Tier I Streams

	Tier I Streams
	County
	Reservations

Map ID Number	Stream Name	Map ID Number	Stream Name	Map ID Number	Stream Name	Map ID Number	Stream Name
1	Yaak River	13	Clearwater River	25	Madison River	37	Poplar River
2	Kootenai River	14	Blackfoot River	26	Gallatin River	38	Missouri River
3	Stillwater River (Flathead River tributary)	15	Bitterroot River	27	East Gallatin River	39	Milk River
4	Whitefish River	16	Bitterroot River, West Fork	28	Shields River	40	Marias River
5	Flathead River, North Fork	17	Rock Creek (Clark Fork tributary)	29	Yellowstone River	41	Teton River
6	Flathead River, Middle Fork	18	Little Blackfoot River	30	Boulder River (Yellowstone River tributary)	42	Sun River
7	Flathead River, South Fork	19	Boulder River (Jefferson River tributary)	31	Stillwater River (Yellowstone River tributary)	43	Dearborn River
8	Swan River	20	Big Hole River	32	Rock Creek (Yellowstone River tributary)	44	Smith River
9	Flathead River	21	Red Rock River	33	Clark's Fork of the Yellowstone River	45	Judith River
10	Thompson River	22	Red Rock River	34	Bighorn River	46	Musselshell River
11	Clark Fork River	23	Beaverhead River	35	Tongue River		
12	Jocko River	24	Ruby River	36	Powder River		

List of Tier I Streams for SB 345

Watershed	River Name	County	# counties
Clark Fork	Bitterroot River * #	Missoula, Ravalli	2
Clark Fork	Bitterroot River, West Fork	Ravalli	1
Clark Fork	Blackfoot River * #	Missoula, Lewis & Clark, Powell	3
Clark Fork	Clark Fork River * #	Missoula, Mineral, Sanders, Granite, Deer Lodge, Powell	6
Clark Fork	Clearwater River #	Missoula	1
Clark Fork	Little Blackfoot River	Powell	1
Clark Fork	Rock Creek	Missoula, Granite	2
Clark Fork	Swan River #	Missoula, Lake, Flathead	3
Clark Fork	Thompson River	Lincoln, Sanders, Flathead	3
Flathead	Flathead River * #	Lake, Flathead, Sanders	3
Flathead	Flathead River, Middle Fork * #	Flathead	1
Flathead	Flathead River, North Fork * #	Flathead	1
Flathead	Flathead River, South Fork * #	Powell, Flathead	2
Flathead	Jocko River	Lake, Sanders	2
Flathead	Stillwater River #	Lincoln, Flathead	2
Flathead	Whitefish River #	Flathead	1
Kootenai	Kootenai River * #	Lincoln	1
Kootenai	Yaak River * #	Lincoln	1
Missouri	Beaverhead River *	Beaverhead, Madison	2
Missouri	Big Hole River * #	Beaverhead, Deer Lodge, Silver Bow, Madison	4
Missouri	Boulder River	Jefferson	1
Missouri	Dearborn River * #	Lewis & Clark, Cascade	2
Missouri	East Gallatin River	Gallatin	1
Missouri	Gallatin River * #	Gallatin	1
Missouri	Jefferson River * #	Silver Bow, Broadwater, Jefferson, Madison, Gallatin	5
Missouri	Judith River *	Judith Basin, Fergus	2
Missouri	Madison River * #	Madison, Gallatin	2
Missouri	Marias River * #	Pondera, Glacier, Toole, Liberty, Hill, Choteau	6
Missouri	Milk River #	Glacier, Hill, Blaine, Phillips, Valley	5
Missouri	Missouri River * #	Lewis & Clark, Cascade, Choteau, Broadwater, Gallatin, Fergus, Blaine, Phillips, Petroleum, Garfield, Valley, Roosevelt, McCone, Richland	14
Missouri	Musselshell River	Wheatland, Rosebud, Phillips, Petroleum, Garfield, Musselshell, Golden Valley	7
Missouri	Poplar River	Daniels, Roosevelt	2
Missouri	Red Rock River	Beaverhead	1
Missouri	Ruby River	Madison	1
Missouri	Smith River * #	Cascade, Meagher	2
Missouri	Sun River * #	Lewis & Clark, Teton, Cascade	3

Missouri	Teton River #	Teton, Choteau	2
Yellowstone	Bighorn River * #	Yellowstone, Big Horn, Carbon, Treasure	4
Yellowstone	Boulder River #	Park, Sweet Grass	2
Yellowstone	Clarks Fork Yellowstone River	Park, Yellowstone, Carbon	3
Yellowstone	Powder River	Powder River, Custer, Prairie	3
Yellowstone	Rock Creek #	Carbon	1
Yellowstone	Shields River	Meagher, Park	2
Yellowstone	Stillwater River	Park, Stillwater	2
Yellowstone	Stillwater River, West Fork	Sweet Grass, Stillwater	2
Yellowstone	Tongue River * #	Big Horn, Rosebud, Custer	3
Yellowstone	Yellowstone River * #	Park, Sweet Grass, Yellowstone, Stillwater, Carbon, Treasure, Rosebud, Custer, Richland, Dawson, Prairie, Wibaux	12
TOTAL (all streams)			

KEY	
Plain Text =	List of streams and rivers with 250-foot setbacks
* =	Class I Waters (23-2-301 MCA)
# =	DNRC definition of navigable stream (although entire stream segments may not be included in the definition)